

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SUSAN FIORNIO,

Plaintiff,

vs.

08cv1082 MCA/RLP

**QWEST EMPLOYEES BENEFIT COMMITTEE,
QWEST HEALTH CARE PLAN,
QWEST CARE PLAN ADMINISTRATOR,
QWEST COMMUNICATIONS INTERNATIONAL, INC.,**

Defendants.

**MEMORANDUM OPINION AND ORDER
DENYING PLAINTIFF'S MOTION TO SUPPLEMENT THE RECORD.**

The matter before the court is Plaintiff's Motion to Supplement the filed August 23, 2009. (Docket No. 39). Defendants have responded to the Motion. (Docket No. 44). No reply has been filed by Plaintiff, and the time for submitting a reply has passed. D.N.M. LR-7.4 (a).

Plaintiff brings this suit pursuant to the Employee Retirement Income Security Act of 1974, §502(a)(1)(B), 29 U.S.C. A. §1132.(a)(1)(B) ("ERISA" herein).

In an ERISA action, a party seeking to introduce evidence from outside the administrative record bears the significant burden of establishing the following four elements:

. . . (1) the evidence must be "necessary to the district court's *de novo* review;" (2) the party offering the extra-record evidence must "demonstrate that it could not have been submitted to the plan administrator at the time the challenged decision was made;" (3) the evidence must not be "[c]umulative or repetitive;" nor (4) may it be "evidence that "is simply better evidence than the claimant mustered for the claim review."

Jewell v. Life Insurance company of North America, 508 F.3d 1303, 1309 (10th Cir. 2007), *quoting* *Hall v. UNUM Life Ins. Co. of Am.*, 300 F.3d 1197, 1203 (10th Cir. 2002), *quoting in turn* *Quesinberry v. Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1027 (4th Cir. 1985).

Plaintiff seeks to supplement the record with six pages of documents, apparently obtained from a Qwest website prior to January 2008, when Plaintiff retired from Qwest. (Docket 39, Ex. B, unsigned affidavit of Plaintiff, ¶3; Docket 39, p. 2). Accordingly, Plaintiff clearly cannot establish the second element necessary for supplementing the record.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Supplement the Record is **DENIED**.



Richard L. Puglisi
United States Magistrate Judge